

unexpended obligations which are to be carried over to the next fiscal year must be accounted for in the new SEP for that fiscal year. Funds must be expended in the order in which they are obligated.

[57 FR 40956, Sept. 8, 1992, as amended at 59 FR 5264, Feb. 3, 1994]

§ 350.23 Acceptance of State plan.

(a) Each plan will be reviewed for content, after which the State will be notified of its acceptance or rejection.

(b) The time for submitting a plan may be extended for a period not to exceed 30 calendar days for good cause shown.

(c) Each State plan shall include an analysis of the effectiveness of its prior year's plan in reaching the stated objectives. The State will be advised whether any changes are needed in the plan or in its intended objectives.

§ 350.25 Effect of failure to submit a satisfactory State plan.

(a) A State will be notified in writing that approval of the plan is being withheld along with the reasons for such action, if:

(1) It is determined that a plan does not meet the requirements described in §§ 350.9 and 350.13; or

(2) It is determined that an SEP is not adequate to ensure effective enforcement of the FMCSR and FHMR; or compatible State rules.

(b) The State shall have 30 calendar days from the date of the notice to modify the plan and resubmit it for approval.

§ 350.27 Procedure for withdrawal of approval.

(a) If a State is not performing according to an approved plan or a State is not adequately enforcing the FMCSR and FHMR, or compatible State rules, the Administrator shall issue a written notice of proposed determination of nonconformity to the Governor of the State or the official designated in the plan. The notice shall state the reasons for the proposed determination and inform the State that it may reply in writing within 30 calendar days from the date of the notice. The reply should address the deficiencies cited in the no-

tice and provide documentation as necessary.

(b) The Administrator's decision, after notice and opportunity for comment, will constitute the final decision of the FHWA. An adverse decision will result in immediate cessation of Federal participation in the plan.

(c) If the State does not respond to a notice of proposed determination of nonconformity as provided in paragraph (a) of this section, the proposed determination shall become the Administrator's final decision with the same effect as paragraph (b) of this section.

(d) Any State aggrieved by an adverse decision issued under this part may seek judicial review pursuant to 5 U.S.C. ch. 7.

§ 350.29 Eligible costs.

(a) Work must be performed pursuant to an acceptable State plan in order for the cost of that work to be eligible for reimbursement. The eligible costs under the grant program are comprised of the allowable direct costs incident to the State's performance and its allocable portion of allowable indirect costs, less applicable credits.

(b) The primary functions to be performed under a basic grant are uniform roadside inspections and safety and compliance reviews with follow-up enforcement actions or compliance measures. Consequently, the major cost will be compensation and expenses of the personnel required to perform these functions.

(c) Subject to paragraph (c)(5) of this section, funds may also be used for:

(1) Enforcement of size and weight limitations;

(2) Detecting the unlawful presence of controlled substances in a commercial motor vehicle or on the person of any occupant (including the operator) of such a vehicle;

(3) Enforcement of State traffic laws and regulations designed to promote safe operation of commercial motor vehicles; and

(4) Sanitary food transportation inspections pursuant to 49 U.S.C. 2808.

(5) *Provided:* these activities are carried out in conjunction with an appropriate type of inspection for enforcement of safety regulations. Size and

weight enforcement must be conducted at locations other than fixed weight facilities, at specific geographical locations where the weight of the vehicle can significantly affect the safe operation of the vehicle, or at seaports where intermodal shipping containers enter and exit the United States.

(d) Eligible personnel costs include, but are not limited to:

- (1) Recruitment and screening;
- (2) Training;
- (3) Salaries and fringe benefits; and
- (4) Supervision.

(e) Equipment and travel costs directly related to the primary functions are also eligible for proportionate reimbursement. These costs include, but are not limited to:

- (1) Vehicles;
- (2) Uniforms;
- (3) Communications equipment;
- (4) Special inspection equipment;
- (5) Vehicle maintenance;
- (6) Motor fuel and oil; and
- (7) Travel and per diem expenses.

(f) Indirect expenses related to facilities used to conduct inspections or to house enforcement personnel, support staff, and equipment, except those related to fixed weighing facilities, may also be eligible to the extent they are measurable and recurring, such as rent and overhead.

(g) A secondary function of the MCSAP is to develop a data base on which to coordinate resources and improve efficiency. Therefore, costs related to data acquisition, storage, and analysis that are specifically identifiable as program expenses may be eligible for reimbursement.

(h) Clerical and administrative expenses, to the extent they are necessary and directly attributable to the MCSAP, are eligible for reimbursement.

(i) The cost of acquisition of real property, land and buildings, is not eligible as a participating cost in the MCSAP. Expenditures related to the improvement of real property, for example, the installation of lights for the inspection of vehicles at night or minor modifications to existing structures, are not considered acquisition costs.

(j) The eligibility of specific costs is subject to review, and such costs must be necessary, reasonable, allocable to

the approved SEP, and allowable under this part and 49 CFR part 18, Uniform Administrative Requirements for Grants and Cooperative Agreements to State and Local Governments.

(k) In-kind contributions are acceptable if they represent eligible costs as established by 49 CFR part 18, OMB Circulars, agency rule or policy.

APPENDIX A TO PART 350—GUIDELINES TO BE USED IN PREPARING STATE ENFORCEMENT PLAN

1. Designate the lead State agency: The plan should indicate the agency responsible for administering the plan.

2. Program Summary: This section includes objectives, activities, resources, costs and an analysis of the effectiveness of the program.

(a) *Define the problem:* In assessing the level of commitment to be made to the enforcement of commercial motor carrier and highway hazardous materials safety regulations, the following factors should be considered:

- (1) Volume of commercial motor vehicle traffic;
- (2) Type of commercial motor vehicle traffic;
- (3) Volume of commercial motor vehicle traffic transporting hazardous materials;
- (4) Number and frequency (rate) of commercial motor carrier accidents;
- (5) Severity of accidents involving commercial motor carriers:
 - (i) Fatalities;
 - (ii) Injuries; and
 - (iii) Property damage.
- (6) Seasonal commercial motor carrier operational patterns within the State;
- (7) Type and frequency of violations of traffic safety laws and regulations pertaining to commercial motor vehicles and accidents;
- (8) Use of alcohol and controlled substances by commercial motor vehicle drivers; and

(9) Problems related to overweight vehicles and safety. (The information in paragraphs 2(a) (6), (7), (8), and (9) of this appendix may or may not be available to the States at present. To be able to measure program effectiveness, however, States will need to compile this type of data.)

(b) *Determine current enforcement efforts:* The plan should identify the activities currently engaged in by the State to address the commercial motor carrier and hazardous materials safety problems. This should include a description of existing laws, regulations and compliance activities, as well as the agencies within the State with enforcement responsibilities.